

BEFORE THE  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

PAUL ROBERTSON  
(Claimant)

PRECEDENT  
BENEFIT DECISION  
No. P-B-401  
Case No. 78-5111

S.S.A. No.

REDDING STEEL & SUPPLY  
(Employer)

Employer Account No.

Office of Appeals No. S-TD-528

The employer appealed from that portion of the decision of the administrative law judge which held that the claimant was eligible for unemployment insurance benefits under the provisions of section 1262 of the Unemployment Insurance Code after May 13, 1978.

STATEMENT OF FACTS

The claimant last worked for the above-named employer as a plant superintendent for approximately ten years, earning \$6 an hour plus a bonus. His last day of work was March 15, 1978.

The claimant was a member of the United Steel Workers Union, Local 7376. The employer's contract with the United Steel Workers Union, Local 7376, expired on March 15, 1978. The employer and the union were unable to reach agreement on a new contract and a strike vote was taken of the union membership on or about March 15, 1978, at which time the members voted to strike. A picket line was established on March 16, 1978. The claimant did not return to work, and participated in picketing beginning at the start of his next regular shift on March 16, 1978.

094-03198

The Department issued a Trade Dispute Memorandum on March 22, 1978, stating that a trade dispute within the meaning of section 1262 of the code involving the employer herein began on March 16, 1978 and that the United Steel Workers Union, Local 7376, was the union directly involved. On April 6, 1978, the claimant completed the customary form designated as "Claimant's Statement on Trade Disputes," and indicated thereon that he did report for his next regularly scheduled shift on March 16, 1978 but that he would not cross the picket line because it was a sanctioned strike. The Department issued a determination on April 7, 1978, which held the claimant ineligible for benefits under section 1262 of the code beginning March 12, 1978 and ending when the disqualifying conditions no longer exist, on the ground he left work and was currently unemployed because of a trade dispute.

The Department issued a subsequent Trade Dispute Memorandum on June 5, 1978, indicating that for benefit and referral purposes the trade dispute with the employer ended on May 18, 1978 when the union abandoned the trade dispute. The employer did not notify any of the striking employees that they were being replaced during the strike due to their failure to return to work. The employer did, however, advertise for and hired some replacements.

On or about Friday, May 12, 1978, or in any case after the picketing ceased, the claimant contacted his employer and asked for his job back. The employer informed the claimant that neither he nor his sons would be hired back. The claimant reported to the Department and a Department representative contacted the employer's representative who handled personnel matters. The employer's representative denied the claimant had been refused a job and informed the Department if employees offered to return to work there would be a position open.

The claimant thereafter returned to his employer's place of business the following Tuesday. He was informed he would not be returned to his job as plant superintendent but that he would be working on a project at the employer's machine shop. Because of the confidential nature of that project, he was asked to sign an agreement of nondisclosure relating to the project activities. However, he refused to sign such an agreement. The claimant would have been assigned to maintenance and in particular to install a cement slab. He would have received

the same rate of pay he had received as plant superintendent, however he would not receive a bonus. The employer contended that the employer's son had assumed the former duties of the claimant and those of the operations manager at the plant and that the employer was no longer using the position of plant superintendent held by the claimant at the time he left work due to the trade dispute.

The claimant had offered to resume his job as plant superintendent and would have accepted that employment. As a result of the claimant's failure to sign the employer's agreement of nondisclosure and agree to work in the machine shop, he was not returned to work.

#### REASONS FOR DECISION

Section 1262 of the Unemployment Insurance Code provides:

"An individual is not eligible for unemployment compensation benefits, and no such benefit shall be payable to him, if he left his work because of a trade dispute. Such individual shall remain ineligible for the period during which he continues out of work by reason of the fact that the trade dispute is still in active progress in the establishment in which he was employed."

Section 1262.6 of the Unemployment Insurance Code provides:

"Whenever the department learns that a trade dispute is in progress, the department shall promptly conduct an investigation and make investigation findings as to the nature, location, labor organizations and employers involved, and other relevant facts concerning the trade dispute as it deems necessary. The department shall provide its findings to its field offices in locations affected by the trade dispute, and shall, upon request, make its findings available to any employer, employers' association or labor organization involved in the trade dispute. The department's investigation findings shall be based upon the information then available to it and shall not be a determination as to the eligibility of any claimant for benefits under Section 1262."

In Bodinson Manufacturing Company v. California Employment Stabilization Commission (1941), 17 C. 2d 321, 109 P. 2d 935, the California Supreme Court established what is referred to as the "volitional test" in determining whether individuals are unemployed because of a trade dispute. To be disqualifying, the unemployment must not only be caused by a trade dispute, it must be the result of a volitional act on the part of the unemployed person or persons.

Section 1262-1, Title 22, California Administrative Code, provides as follows:

"With respect to acts or periods of ineligibility under Section 1262 of the code 'week of ineligibility' shall be any week or weeks applicable to the individual under these regulations, during any portion of which his unemployment is due to his having left his work because of a trade dispute and for the period during which he continues out of work by reason of the fact that the trade dispute is still in active progress in the establishment in which he was employed."

There is no disagreement between the parties that a trade dispute began on March 16, 1978, involving the employer and the Steel Workers Union, Local 7376, nor that the claimant was a member of that union who participated in the strike vote initially and who also participated as a picket rather than return to his job.

In Appeals Board Decision No. P-B-112, the Appeals Board held, in accordance with Bodinson Manufacturing Co. v. California Employment Stabilization Commission (1941), 17 C. 2d 321, 109 P. 2d 935, that a refusal to cross a peaceful picket line will be considered evidence of a voluntary leaving of work because of a trade dispute. In this case, the claimant not only refused to cross a peaceful picket line on March 16, 1978 to return to work, he participated in picketing himself. Accordingly, the claimant voluntarily left work because of a trade dispute and was properly held ineligible for benefits under the provisions of section 1262 of the code beginning March 16, 1978.

Having determined the claimant was properly held ineligible for benefits under the provisions of section 1262 of the code, it remains to be determined whether his subsequent offer to return to work ended his trade dispute disqualification for benefits. In this respect, it is necessary to determine if the employer refused the claimant's subsequent offer to return to his old job at the time or shortly before the strike was abandoned by the union, or abolished the claimant's former position resulting in a new or intervening cause of his continuing unemployment.

In Mark Hopkins, Inc. v. California Employment Commission (1944), 24 C. 2d 744, the California Supreme Court stated that a claimant is ineligible for benefits if the trade dispute is the direct cause of his continuing out of work. It follows that if a claimant leaves his work because of a trade dispute and thereafter does everything reasonably within his power as an individual to abandon the trade dispute, and unconditionally and unequivocally offers to return to work, but the employer refuses to employ him, the trade dispute ceases to be the direct cause of his unemployment and he is no longer ineligible for benefits. A mere change in a claimant's attitude of mind is insufficient to break the causal connection between his unemployment and the trade dispute; and his conduct must be in good faith and not merely a device to circumvent the statute.

In Ruberoid v. California Unemployment Insurance Appeals Board (1963), 59 C. 2d 73; 27 Cal. Rptr. 878, it was held that permanent replacement of striking workers immediately precluded any choice or volition on their part to return to their jobs since the employer's act severed the trade dispute as the proximate cause of unemployment.

In the instant case, the claimant offered to return to his former job as plant superintendent. There is no evidence that he placed any conditions on that offer. It is clear that the claimant made an unconditional and unequivocal effort to resume employment in the job he held at the time he left work due to the trade dispute. The employer refused to return the claimant to his former job but offered him other employment in its machine shop at no reduction in pay, except that he would not receive a bonus, on the condition that he sign the employer's proprietary agreement.

Accordingly, the employer's refusal to return the claimant to his former job on or about May 12, 1978 broke the causal chain and constituted a new and intervening cause of the claimant's unemployment. At that time, the trade dispute ceased to be the direct cause of his continuing out of work. We also note that the employer contended that it had, in effect, abolished the claimant's job as plant superintendent and was no longer using that position. In our opinion, abolishment of a position has the same effect as permanently replacing a striking worker and also operates to break the causal chain. The striking worker no longer continues out of work due to the trade dispute but is unemployed because his job was abolished and the continuing unemployment ceases to be the direct result of a volitional act on the part of the unemployed person.

Therefore, on or about May 12, 1978, the claimant unconditionally offered to return to his former job as plant superintendent and his employer refused that unconditional offer to return to work because it had abolished the claimant's former job or for other reasons personal to the employer. Accordingly, the trade dispute ceased to be the direct cause of the claimant's continuing unemployment due to the new and intervening act of the employer. In these circumstances, the claimant is not ineligible for benefits under section 1262 of the code beginning May 14, 1978.

#### DECISION

The appealed portion of the decision of the administrative law judge is affirmed. Benefits are payable as provided in the appealed decision.

Sacramento, California, November 9, 1978.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HARRY K. GRAFE

RICHARD H. MARRIOTT

HERBERT RHODES